IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 191 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
M/S. SHREEJI CHEMICALS - Opponent(s)

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Appearance :
MR. MANISH R. BHATT for Applicant(s).
None for Opponent(s) though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 04/10/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income Tax Appellate Tribunal, Ahmedabad Bench `A', at the instance of the Revenue, has made this

Reference under Section-256(1) of the Income Tax Act, 1961 on the following questions for the opinion of this Court, which arise out of I. T. A. No.689/Ahd/1989 relating to Assessment Year 1984-85 decided by the Tribunal on 25th October, 1993:

> *"(1) Whether the Appellate Tribunal is right in law and on facts in holding that the expenditure on prize scheme is not caught by the mischief of section 37 (3A)/3(B)?*
>
> *(2) Whether the Appellate Tribunal is right in law and on facts in holding that the expenditure on `Prize Scheme' should be treated as trade discount?"*

2. The facts which are not in dispute are that the Assessee is a manufacturer of detergent powder commonly known as "Vimal Detergent Powder". The Assessee floated a Scheme known as "Prize Scheme", which envisaged some prizes in terms of money to the Assessee's dealers or stockists or agents, who were to lift bulk quantity of detergent powder. The Assessing Officer held that the expenditure incurred in implementing the Prize Scheme was falling under the mischief of Section-37(3A) of the Act and therefore, the Assessee was not entitled to any disallowance. He also observed that the Prize Scheme in relation to the customers was also falling within the

mischief of Section-37(3A) of the Act. He, accordingly, deleted the disallowance and proposed charging of the tax on the amounts which were claimed as deduction.

2.1 Being aggrieved by the order passed by the Income-Tax Officer/Assessing Officer, the Assessee took up the matter in appeal. The Commissioner of Income-Tax (Appeals), however, held that the Prize Scheme in relation to the customers was falling under the mischief of Section-37(3A) of the Act, while the other part of the Scheme would not fall within the said mischief.

2.2 The Department, being aggrieved by the order passed by the CIT (Appeals), took up the matter to the Tribunal.

After service of the notice, the Assessee also filed its cross objections submitting, *inter alia*, that the Prize Scheme under which certain prizes in form of coupon, etc. were to be given to the customers, was also outside the scope of Section-37(3A) of the Act.

The Tribunal, after hearing the parties, came to the conclusion that the CIT (Appeals) was justified in its view. It, accordingly, dismissed the appeal and rejected the cross objections.

2.3 The Revenue, being dissatisfied with the order, made an application for making a Reference to this Court, which was allowed and the above referred questions have been referred to this Court for its opinion.

3. Mr.Bhatt, learned Counsel for the Revenue, submits that the Scheme in relation to the dealers, agents, stockists or such intermediaries, would also come within the phrase “sales promotion” and the words “sales promotion” are of wide amplitude and are to be given their widest scope and if that is so done, the Prize Scheme whereunder certain intermediaries, etc. were to get certain prizes, would also come under the Scheme.

4. We have gone through the order passed by the Income Tax Officer, Commissioner of Income-Tax (Appeals) and the Tribunal. The Income Tax Officer/Assessing Officer has not considered the effect of the Scheme *qua* Section-37(3A) of the Act, where it was in relation to the stockists, distributors, agents or intermediaries. In fact, it concluded its order against the interest of the Assessee after discussing the Scheme which was in relation to the direct consumers/customers.

5. The Commissioner of Income-Tax (Appeals) has

observed that the Scheme was in two parts, the first limb of the exercise was a direct appeal to the customers to buy 1 kilogram packing of the Assessee's products and that too in more and more quantity, while the second part of the Scheme was attracting the stockists, distributors, dealers, agents or so, whereunder they were assured that on lifting large or larger quantity of the products, they would be entitled to certain amount of bonus. For the first part of the Scheme, the CIT (Appeals) held that the Scheme was effectuated for sales promotion and the Assessee would not be entitled to the benefits of deduction as it was attracting the mischief of Section-37(3A) of the Act.

6. So far as the second part of the Scheme is concerned, the CIT (Appeals) has observed that the Scheme was floated to ask the stockists, distributors, etc. to lift more quantity and obtain bonus. In our opinion, if any bonus is given to distributors, stockists, etc., then, it cannot be said that it was in relation to the sales promotion. The Assessee, virtually, was providing incentive to the stockists, etc. to lift more quantity for sale in the open market. This lifting of the quantity would not come within the mischief of the sales promotion. The nomenclature of the Scheme, in fact, would not decide the fate of the Assessee, but, the Court would

have to see the real intention behind the Scheme by whatever name it is called. It is also to be noted that the bonus given to the distributors, etc. was in form of a discount and it had nothing to do with the sales promotion. The CIT (Appeals), in our opinion, was certainly justified in observing that the words “sales promotion” would mean any activity which goes to promote sales. The Scheme in relation to the distributors, etc. was not an activity which was to promote sales.

7. The order of the CIT (Appeals) was rightly confirmed by the Tribunal. Both the questions are answered against the interest of the Revenue. The Reference stands disposed of accordingly. No costs.

[***R.S.Garg, J.***]

[***D. H. Waghela, J.***]

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